Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES

Zena D. Crenshaw, *Petitioner*,

v.

The Disciplinary Commission of
the Supreme Court of Indiana, *Respondent* .

On Petition for a Writ of Certiorari to the
Supreme Court of Indiana

PETITION FOR A WRIT OF CERTIORARI

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34PP

Questions Presented

1. Whether the Supreme Court of Indiana transgressed the petitioner's right to due process and equal protection by finding her in contempt for seeking federal intervention to resolve claims generated by subpoenas propounded upon her by its Disciplinary Commission based on a determination of her motive for doing so without hearing on the issue or the related objections for which she sought relief;

2. Whether the Supreme Court of Indiana transgressed the petitioner's right to due process and equal protection by requiring her to abandon pursuit of federal intervention and the underlying claims for relief by complying with subpoenas prompting her unresolved objections or remain suspended from the practice of law for failing to do so;

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In the
SUPREME COURT OF THE UNITED STATES

Zena D. Crenshaw, *Petitioner,*

v.

The Disciplinary Commission of the
Supreme Court of Indiana, *Respondent.*

On Petition for a Writ of Certiorari to the
Supreme Court of Indiana

Zena D. Crenshaw respectfully petitions for a writ of certiorari to review the order of the Supreme Court of Indiana finding her in contempt and indefinitely[1] suspending her from the practice of law in conjunction with its subsequent order denying her verified motion to rescind the sanction subject to further hearing or stay its effectiveness pending the outcome at hand.

---

[1]The order provides that Ms. Crenshaw ". . . should be suspended from the practice of law . . . until such time as she complies with the Commission's subpoenas." *(App A, p 9).* However, it does not allow for her automatic reinstatement upon compliance. *(See, App A, p 9-10).*

Opinions Below

The orders of the Supreme Court of Indiana are unreported and set forth, respectively, as Appendix A and Appendix C.

Jurisdiction

On April 9, 1999, the Supreme Court of Indiana found Ms. Crenshaw in contempt and indefinitely suspended her from the practice of law pursuant to an original action for a rule to show cause instituted against her by its Disciplinary Commission which investigates and prosecutes charges of attorney misconduct (Commission). *(App A)*. On April 22, 1999, Ms. Crenshaw filed a verified motion to rescind the sanction subject to further hearing or stay its effectiveness pending the outcome at hand. *(See Brief, App B)*. The motion was summarily denied on May 5, 1999. *(App C)*.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

Statement of the Case

The Supreme Court of Indiana chronicles the process bringing Ms. Crenshaw before it on a contempt citation prompted by her failure to comply with subpoenas propounded upon her by its Disciplinary

Commission (Commission):

This case began on September 18, 1998, when the Commission filed its *Verified Information and Motion for Order to Show Cause why Respondent Should not be Held in Contempt of Court.* On January 8, 1999, the respondent filed her *Verified Motion to Dismiss for Lack of Jurisdiction over Subject Matter.* The Commission responded on January 20, 1999. On January 25, 1999, we issued an *Order to Appear and Show Cause*, directing the respondent, in the event this Court denied her motion to dismiss, to appear and show cause why she should not be held in contempt of this Court for her failure to respond to the Commission's subpoenas. We denied the respondent's motion to dismiss on February 18, 1999, and, accordingly, held a show cause hearing on February 23, 1999. The respondent appeared in person and the Commission was represented by staff attorney Robert C. Shook.

The respondent was admitted to the practice of law in this state in 1984, and maintains a private law practice in Gary, Indiana. A grievance was filed with the Disciplinary Commission alleging that respondent had acted unethically and, in effect, embezzled assets from her mother's estate to the detriment of her siblings. We have no basis at this point to evaluate this claim. The only event before us is the allegation and the fact that during the course of the Commission's investigation of alleged dishonest conduct on the part of the respondent, it sent to her two investigative subpoenas pursuant to Ind. Admission and Discipline Rule 23(9)(f). The subpoenas demanded production of certain documents relating to the alleged misconduct. Each was sent to her address as she had reported it to the Roll of Attorneys. The second subpoena was sent by certified mail and was duly acknowledged by the returned "green card." It was accompanied by a warning that her failure to comply with it could subject her to contempt proceedings. She never complied with

either subpoena.

(App A, p 1-3). (emphasis added).

While unsuccessful, the referenced motion to dismiss established that the investigation at issue was subject to preemption pursuant to cause number 98-1081, then before this Court as *Crenshaw v. the Disciplinary Commission of the Supreme Court of Indiana. (R, Mtn Dsms, p 2-3, ¶7-9).* The prospect of federal intervention was not foreclosed in the case until February 22, 1999. (*See, Crenshaw v. the Disciplinary Commission of the Supreme Court of Indiana,* Cause No. 98-1081 before the Supreme Court of the United States, Petition For A Writ of Certiorari).

The Supreme Court of Indiana reports:

> At the hearing on the Commission's motion to hold the respondent in contempt, the respondent made very general reference that "bias" on the part of the complaining party and the Commission staff fuels these proceedings. She asked that she be allowed to conduct discovery in order to substantiate her claims of bias and requested that she be allowed to preserve her other challenges. She also claimed that it is proper to wait and allow her to exhaust all avenues of redress with the federal courts before this matter is allowed to proceed.

(App A, p 4-5). (emphasis added).

Forty-five (45) days later, the Court responded:

> Subpoenas may be subject to motions to quash,

but we note that none has been filed with this Court in this case. Nonetheless, we will take the respondent's oral presentation as constituting a motion to quash and consider it in that light. In a civil case, the usual grounds for quashing a subpoena *duces tecum* are unreasonableness or oppressiveness. *Newton v. Yates*, 353 N.E.2d 485 (Ind.Ct.App. 1976). The burden is on the moving party to show why documents responsive to the subpoena should not be produced. *Id.*

The respondent's claims of bias are not supported by any substantive evidence at all, including even so much as a description of their nature, or who is claimed to be biased. In any event, claims of bias do not stop the Commission's investigation of alleged misconduct in its tracks. Lawyers, by virtue of their privilege of holding licenses to practice law, are duty-bound to respond to the Commission's requests for information. *See* Ind. Professional Conduct Rule 8.1(b) (lawyers in connection with disciplinary matters shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority). This heightened obligation to comply with demands for information exceeds the obligation imposed upon nonlawyer citizens. If there is any basis for claiming the proceedings against the respondent are not being pursued in good faith by the Commission or anyone else, the respondent has provided us with no evidence to support that claim.

(App A, p 5-6). (emphasis added).

It concludes:

The respondent's other unsupported allegations, still unspecific after almost a year since their genesis, provide no evidentiary basis to quash the subpoenas.

. . .

She cites to us precedent stating that one cannot be held

> in contempt for failing to abide by an order which a court has no authority to issue. *State ex rel. Leffingwell v. Superior Court No. 2 of Grant County*, 262 Ind. 574, 321 N.E.2d 568 (1974). While that may be accurate as an abstract legal proposition, it has no application to this case because the subpoenas the respondent ignored are valid.
>
> *(App A, p 6-7). (emphasis added).*

Ms. Crenshaw was deemed "contemptuous" and suspended from the practice of law indefinitely. *(App A, p 8).*

How the Federal Questions were Presented

At hearing, Ms. Crenshaw emphasized to the Supreme Court of Indiana that a question material to whether she was guilty of contempt was resolved through her efforts merely one (1) day before she was compelled to answer for resisting subpoenas propounded upon her by its Commission. As of February 22, 1999, the apparent conflict of jurisdiction between the Commission and the Seventh Circuit was left to its natural course by this Court and could not preclude contempt pursuant to *State ex rel. Leffingwell v. Superior Court No. 2 of Grant County*, 262 Ind. 574, 321 N.E.2d 568 (1974). (*See, Crenshaw v. the Disciplinary Commission of the Supreme Court of Indiana*, Cause No. 98-1081 before the Supreme Court of the United States, Petition For A Writ of Certiorari). The cited petition or its outcome allowed the

Supreme Court of Indiana to proceed on the undisputed premise that its Commission was authorized to propound the subpoenas at issue. Accordingly, Ms. Crenshaw endeavored to show why she should not be punished for having yet to comply with them as of February 23, 1999. Her defense strategy was preempted without notice.

Pivotal to the finding of contempt against Ms. Crenshaw is the determination of her motive for pursuing federal intervention in the underlying grievance:

> The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations.
> In fact, we view her strategy as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance.
>
> *(App A, p 7). (emphasis added).*

Ms. Crenshaw responded by verified motion to rescind the related sanction subject to further hearing or stay its effectiveness pending the outcome at hand. *(R, Ver. Mtn Rscd/Stay, 4/22/99).* Her motion incorporates a brief, identifying the substantial federal rights at stake and anticipating the questions presently at issue. *(App B).* It was

summarily denied on May 5, 1999. *(App C).*

Reasons for Granting the Writ

Rule 23, Section 1 of the INDIANA RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS positions the Supreme Court of Indiana as essentially the executive, legislative and judicial branch governing attorneys under its jurisdiction. The rule provides:

> Each person granted the privilege to practice law in this State has the obligation to behave at all times in a manner consistent with the trust and confidence reposed in him or her by this Court and in a manner consistent with the duties and responsibilities as an officer or judge of the courts of this State. The Supreme Court has exclusive jurisdiction of all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as `attorney') is charged with misconduct. The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.
>
> The term `attorney' as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established.
>
> *A&D Rule 23, §1. (emphasis added).*

Accordingly, the Supreme Court of Indiana is capable of fashioning a

bill of attainder as described in *United States v. Lovett,* 328 U.S. 303 (1946). Every direct act it takes to regulate the legal profession (*for eg.* promulgating disciplinary rules; issuing decisions in disciplinary matters, etc.) has a legislative as well as executive and judicial aspect or quality.

The *Lovett* opinion notes:

> Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted courts. And even the courts to which this important function was entrusted, were commanded to stay their hands until and unless certain tested safeguards were observed.
>
> *Id. at 317. (citation omitted). (emphasis added).*

Ms. Crenshaw detailed the safeguards to which she considered herself entitled before the Supreme Court of Indiana. *(App B, p 4-7, 13-15).* Yet, the Court summarily denied her relief. *(App C).*

"The distinguishing characteristic of a bill of attainder is the substitution of legislative determination of guilt and legislative imposition of punishment for judicial finding and sentence." *Lovett at 321-322.* Ms. Crenshaw is being punished by a profound deprivation of rights and undue imposition of irreparable harm. *(See, App B, p 7-15).*

While she seeks to be heard on the subject by the Supreme Court of Indiana, cries that fall on deaf ears are of no effect. Her prospect for relief hinges on a binding determination that the pursuit of federal intervention precipitating this petition was not improper *per se*. The Supreme Court of Indiana has unanimously concluded otherwise. *(See, App C, p 2).*

> **Ms. Crenshaw is essentially deemed guilty of pursuing federal intervention in violation of unprecedented fiat and interposing ". . . camouflage attempts to dictate the procedure employed to resolve the (underlying) grievance."**

This case transcends a factual dispute. It is anchored by the following edict:

> Lawyers, by virtue of their privilege of holding licenses to practice law, are duty-bound to respond to the Commission's requests for information.
>
> . . .
>
> This heightened obligation to comply with demands for information exceeds the obligation imposed upon nonlawyer citizens.
>
> *(App A, p 6).*

The Supreme Court of Indiana counsels:

> . . . the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations.
>
> *(App A, p 7).*

Nonetheless, Indiana rules of professional conduct provide:

> A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions . . . concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.
>
> *Comments, Rule 8.4, Indiana Rules of Professional Conduct.*

Despite the elusiveness of motive and its clear and convincing standard for attorney misconduct, the Supreme Court of Indiana determined that Ms. Crenshaw ". . . managed to demonstrate professional misconduct before our very eyes." *(App A, p 9).*

This petition questions whether the Supreme Court of Indiana can properly assess the conduct at issue without allowing Ms. Crenshaw to challenge dispositive motives and obligations prescribed to her. However, the critical consideration is the nature of her alleged offense. By all accounts, she has not been idle:

> During the pendency of these proceedings, the respondent challenged the jurisdiction of the Commission and this Court by filing a complaint in the United States District Court for the Southern District of Indiana, alleging therein that certain provisions of Indiana Admission and Discipline Rule 23, governing attorney disciplinary proceedings, are constitutionally invalid. The district court dismissed the complaint on July 1, 1998, saying that federal intervention was unnecessary given that Indiana disciplinary

> proceedings, *inter alia*, provide adequate opportunity for the respondent to raise constitutional challenges. On July 16 the federal court declined to amend its findings and judgment. The respondent appealed that decision to the United States Court of Appeals for the Seventh Circuit, where it was affirmed on March 15, 1999. On August 21, she sought a writ of prohibition from the Seventh Circuit against the Commission, which was denied. She is now seeking review of that denial by the United States Supreme Court.
>
> *(App A, p 3-4).*

Undoubtedly, her limited presentation to the Supreme Court of Indiana brought it to conclude:

> . . .
>
> Her unexplained and unsupported refusal to cooperate with the Commission is a serious violation of her professional responsibility, regardless of the merits of any response she may have.
>
> *(App A, p 8). (emphasis added).*

The Supreme Court of Indiana will not consider relevant contentions, currently posited before federal courts, even if they justify Ms. Crenshaw. She is essentially deemed guilty of pursuing federal intervention in violation of unprecedented fiat and interposing ". . . camouflage attempts to dictate the procedure employed to resolve the (underlying) grievance." *(App A, p 7).*

> **The effect of the orders at issue ". . . is practically the same as that of an old common-law bill of attainder, against which our forebears had such an**

abhorrence that they forbade it in Art. I, 9, of the Constitution."

This Court explained:

> Yet certainly where the State attaches "a badge of infamy" to the citizen, due process comes into play. '[T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.'
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. 'Posting' . . . is a stigma, an official branding of a person. . . . This appellee was not afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.
>
> *Wisconsin v. Constantineau*, 400 U.S. 433 at 437 (1971).

The Supreme Court of Indiana endorsed the opinion. *See, Speckman v. City of Indianapolis*, 540 N.E.2d 1189 at 1193 (Ind. 1989).

Nonetheless, its Clerk circulated the order associating Ms. Crenshaw with criminal as well as unethical conduct and suspending her from the practice of law as follows:

> . . . to the parties to the proceeding, the Clerk of this Court (the Supreme Court of Indiana), the Clerk of the United States Court of Appeals for the Seventh Circuit, the Clerk of each of the Federal District Courts in this State, the Clerk of the United States Bankruptcy Courts

> in this State, the Clerk of the Court and Bar Association of each county in which the attorney maintains an office, the Clerk of the Court and Bar Association of each contiguous county, a newspaper of general circulation in each county in which the attorney maintains an office, the official publication of the Indiana State Bar Association, and the American Bar Association.
>
> *(See, App A, p 10).*

The suspension commenced on Mother's Day, harshly commemorating the related death of Ms. Crenshaw's mother. *(See, App A, p 9).* All state court Justices concur in the denial of additional hearing and recision as well as stay of sanction. *(See, App A, p).* Apparently, they are adamant.

Ms. Crenshaw has briefed the question of whether she is entitled to additional hearing before the Supreme Court of Indiana and incorporates her analysis herein by reference. *(App B, p 3-7).* She has set forth the facts, circumstances and law that establish the orders at issue as punishment through the denial of rights and undue imposition of irreparable harm. *(App B, p 7-15).* Their effect ". . . is practically the same as that of an old common-law bill of attainder, against which our forebears had such an abhorrence that they forbade it in Art. I, 9, of the Constitution." *See, Wisconsin v. Constantineau at 444.*

Conclusion

For the foregoing reasons, your petitioner prays that this Court address the important federal questions presented by this petition and reconcile the conflict between this case and applicable precedent of this Court.

RESPECTFULLY SUBMITTED,

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APPENDIX A

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF THE CONTEMPT OF THE SUPREME COURT OF INDIANA OF ZENA D. CRENSHAW,	]	45S00 9809 DI 506
Respondent.	]	

CONTEMPT OF COURT
Original Action

April 9, 1999

Per curiam

We find that the respondent, attorney Zena D. Crenshaw, is in contempt of this Court for failing to abide by investigative subpoenas issued to her by the Indiana Supreme Court Disciplinary Commission.

This case began on September 18, 1998, when the Commission filed its *Verified Information and Motion for Order to Show Cause why Respondent Should not be Held in Contempt of Court.* On January 8, 1999, the respondent filed her *Verified Motion to Dismiss for lack of Jurisdiction over Subject Matter.* The Commission responded on January 20, 1999. On January 25, 1999, we issued an *Order to Appear and Show Cause*, directing the respondent, in the event this Court denied her motion

to dismiss, to appear and show cause why she should not be held in contempt of this Court for her failure to respond to the Commission's subpoenas. We denied the respondent's motion to dismiss on February 18, 1999, and, accordingly, held a show cause hearing on February 23, 1999. The respondent appeared in person and the Commission was represented by staff attorney Robert C. Shook.

The respondent was admitted to the practice of law in this state in 1984, and maintains a private law practice in Gary, Indiana. A grievance was filed with the Disciplinary Commission alleging that respondent had acted unethically and, in effect, embezzled assets from her mother's estate to the detriment of her siblings. We have no basis at this point to evaluate this claim. The only event before us is the allegation and the fact that during the course of the Commission's investigation of alleged dishonest conduct on the part of the respondent, it sent to her two investigative subpoenas pursuant to Ind.Admission and Discipline Rule 23(9)(f).[1] The subpoenas demanded production of certain documents relating to the alleged misconduct. Each was sent to her address as she had reported it

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[1]Under the provision, the Executive Secretary of the Commission has the power to issue subpoenas in the name of the commission, including subpoenas *duces tecum*. The failure to obey such a subpoena is punishable as a contempt of this Court.

to the Roll of Attorneys. The second subpoena was sent by certified mail and was duly acknowledged by the returned "green card." It was accompanied by a warning that her failure to comply with it could subject her to contempt proceedings. She never complied with either subpoena.

During the pendency of these proceedings, the respondent challenged the jurisdiction of the Commission and this Court by filing a complaint in the United States District Court for the Southern District of Indiana, alleging therein that certain provisions of Indiana Admission and Discipline Rule 23, governing attorney disciplinary proceedings, are constitutionally invalid. The district court dismissed the complaint on July 1, 1998, saying that federal intervention was unnecessary given that Indiana disciplinary proceedings, *inter alia*, provide adequate opportunity for the respondent to raise constitutional challenges. On July 16 the federal court declined to amend its findings and judgment. The respondent appealed that decision to the United States Court of Appeals for the Seventh Circuit, where it was affirmed on March 15, 1999. On August 21, she sought a writ of prohibition from the Seventh Circuit against the Commission, which was denied. She is now seeking review of that denial by the United States Supreme Court. Claims of the unconstitutionality of the Commission's investigation, along with a narrative of her attempts to

block the investigation with federal court intervention, constitute the substance of her January 8, 1999, motion before this Court to dismiss this contempt proceeding.

At the hearing on the Commission's motion to hold the respondent in contempt, the respondent made very general reference that "bias" on the part of the complaining party and the Commission staff fuels these proceedings.[2] She asked that she be allowed to conduct discovery in order to substantiate her claims of bias and requested that she be allowed to preserve her other challenges. She also claimed that it is proper to wait and allow her to exhaust all avenues of redress with the federal courts before this matter is allowed to proceed.

Subpoenas may be subject to motions to quash, but we note that none has been filed with this Court in this case.[3] Nonetheless, we will take the respondent's oral presentation as constituting a motion to quash and consider it in that light. In a civil case, the usual grounds for quashing a

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[2]The opinion of the Seventh Circuit recites that some of the charges of bias are leveled at this Court. We have no indication that the respondent has made any claim of bias on the part of the Court and we know of no basis for such an allegation.

[3]Although it appears that the respondent may have moved the Commission to quash an investigative subpoena it issued to her in 1997, she made no motion to quash before this Court, and stated no grounds that would support a motion to quash.

subpoena *duces tecum* are unreasonableness or oppressiveness. *Newton v. Yates*, 353 N.E.2d 485 (Ind.Ct.App. 1976). The burden is on the moving party to show why documents responsive to the subpoena should not be produced. *Id.*

The respondent's claims of bias are not supported by any substantive evidence at all, including even so much as a description of their nature, or who is claimed to be biased. In any event, claims of bias do not stop the Commission's investigation of alleged misconduct in its tracks. Lawyers, by virtue of their privilege of holding licenses to practice law, are duty-bound to respond to the Commission's requests for information. *See* Ind. Professional Conduct Rule 8.1(b) (lawyers in connection with disciplinary matters shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority). This heightened obligation to comply with demands for information exceeds the obligation imposed upon nonlawyer citizens. If there is any basis for claiming the proceedings against the respondent are not being pursued in good faith by the Commission or anyone else, the respondent has provided us with no evidence to support that claim.

The respondent's other unsupported allegations, still unspecific after almost a year since their genesis, provide no evidentiary basis to

quash the subpoenas. The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations. In fact, we view her strategy as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance. She cites to us precedent stating that one cannot be held in contempt for failing to abide by an order which a court has no authority to issue. *State ex rel. Leffingwell v. Superior Court No. 2 of Grant County*, 262 Ind. 574, 321 N.E.2d 568 (1974). While that may be accurate as an abstract legal proposition, it has no application to this case because the subpoenas the respondent ignored are valid.

Because the respondent has presented no grounds for quashing the subpoenas, we are left only with the fact that she twice knowingly refused to comply with their directives. As such, we find that her conduct is contemptuous.

This Court has inherent and statutory power to punish contempt of its authority and process. I.C. 33-2-1-4; *Matter of Crumpacker*, 431

N.E.2d 91 (Ind. 1982). Our primary objective in cases where a disciplinary respondent fails to abide by a Commission subpoena is to exact compliance with the directive contained in that subpoena. *See, e.g., Vandekooi v. Echelbarger*, 250 Ind. 175, 235 N.E.2d 165 (1968) (primary object of civil contempt proceeding to coerce action for the benefit of an aggrieved party damaged by the failure of another to conform to a court order). We can determine no basis for respondent's refusal to comply with a facially valid subpoena. Certainly respondent has provided no basis to quash the subpoena. Her unexplained and unsupported refusal to cooperate with the Commission is a serious violation of her professional responsibility, regardless of the merits of any response she may have.

The standard sanctions used for contempt are fines or incarceration until the respondent complies with whatever legal obligation is the subject of the contempt. Here, there is a unique nexus between the refusal to respond to the subpoena and the fact that the refusal is that of a lawyer under investigation for professional misconduct. In effect, the respondent has managed to demonstrate professional misconduct before our very eyes. There being no other appropriate sanction, we find that the respondent should be suspended from the practice of law in this state until

such time as she complies with the Commission's subpoenas.[4]

IT IS, THEREFORE, ORDERED that the respondent, Zena D. Crenshaw, is suspended from the practice of law in this state, effective thirty (30) days from the date of this order. The respondent is ordered to file the affidavit required by Admis.Disc.R. 23(26)(c)(1). To be reinstated to the practice of law, she must purge herself of her contempt of this Court by fully complying with the Disciplinary Commission's amended subpoenas, issued July 22, 1998, and August 27, 1998. The Disciplinary Commission is directed to notify this Court in writing of the respondent's compliance with the directives of those subpoenas.

The Clerk of this Court is directed to provide copies of this Order to the respondent, to the Indiana Supreme Court Disciplinary Commission, and to all other entities pursuant to Admis.Disc.R.23(3)(d), governing suspension.

Costs of this proceeding are assessed against the respondent.

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[4]*See, e.g., Matter of Trueblood*, 616 N.E.2d 8 (Ind. 1993), where the respondent was suspended from the practice of law upon recommendation of the hearing officer until such time as she complied with the hearing officer's orders compelling discovery.

APPENDIX B

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF	]	
THE CONTEMPT OF THE	]	
SUPREME COURT OF	]	
INDIANA OF	]	45S00 9809 DI 506
ZENA D. CRENSHAW,	]	
	]	
Respondent.	]	

Brief Supporting Respondent's Verified Motion
To Rescind Sanction Subject To Further Hearing Herein
Or Stay Its Effectiveness To Allow For Petition For Certiorari

I. INTRODUCTION

The Court tracks and thereby acknowledges the procedural history culminating with its Order herein of April 9, 1999. (Per Curiam p 1-3). The denial of a petition for certiorari by the United States Supreme Court such as the respondent experienced in her quest to circumvent that Order has no significance as a ruling. *See, Parker v. Ellis*, 362 U.S. 574, 576 (1960). Yet, this Court proclaims:

> The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper indeed the only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations.
>
> (Per Curiam p 5).

Nonetheless, the jurisdiction of the Disciplinary Commission for the Supreme Court of Indiana (Commission) regarding the referenced investigation was subject to preemption until Monday, February 22, 1999. *(See, Crenshaw v. Commission, No. 98-1081 before the U.S. Sup Ct, Order of 2/22/99).* The respondent was compelled to answer its clouded authority on Thursday, February 18, 1999. (Order herein of 2/18/99). By the time of hearing on Tuesday, February 23, 1999, the subpoenas at issue were facially valid and the respondent proceeded accordingly.

The Court admonished an attorney similarly situated that ". . . if he desired more time in which to defend himself, he should have taken steps to procure it." *Lane v. Campbell,* 14 N.E.2d 552 at 55 (1938). The respondent reportedly heeded its advice in her case:

> At the hearing on the Commission's motion to hold the respondent in contempt, the respondent made very general reference that `bias' on the part of the the (sic) complaining party and the Commission staff fuels these proceedings. She asked that she be allowed to conduct discovery in order to substantiate her claims of bias and requested that she be allowed to preserve her other challenges. She also claimed that it is proper to wait and allow her to exhaust all avenues of redress with the federal courts before this matter is allowed to proceed.
>
> (Per Curiam p 3-4). (footnote omitted).

Yet the Court responded 45 days later:

> Subpoenas may be subject to motions to quash, but we

note that none has been filed with this Court in this case. Nonetheless, we will take the respondent's oral presentation as constituting a motion to quash and consider it in that light.

(Per Curiam p 4). (footnote omitted).

This approach transgresses the respondent's right to due process.

II. The Court's Order herein is in error in that it denies the respondent adequate opportunity to be heard, defend, enforce and protect her rights; is premised on a conclusive presumption of her guilt; impedes open and equal access to courts; and chills the exercise of basic constitutional rights;

a. The respondent is entitled to be heard on the determination of her motive by the Court before it curtails her defense to allegations of contempt; as to the tenor of matters judicially noticed; and as to facts material to the scope and severity of any sanction before it is imposed against her.

Extrapolating from precedent of this Court, the Indiana Court of Appeals explained:

> Fundamental notions of fairness demand an opportunity for a noncomplying party to present reasons for failure to follow the mandates of a court. The person may have been prevented from complying for a myriad of reasons we cannot even begin to imagine.
>
> *Bottoms v. B&M Coal Corp.*, Ind. App., 405 N.E.2d 82 (4th Dist 1980).

Of course, `(o)nce it becomes clear that additional proceedings are

pointless, the court should bring the case to a close.' *D. Patrick, Inc. v. Ford Motor Co.*, 8 F.3d 455 at 459 (7th Cir. 1993). The respondent's contentions, particularly as to her claims of bias, are largely a matter of public record and can be determined by judicial notice. *See, Henson v. CSC Credit Services*, 29 F.3d 280 at 284 (7th Cir. 1994). Apparently through deduction, the Court prescribed her motive ". . . as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance." (Per Curiam p 5).

`(T)he method of judicial reasoning cannot be hermetically sealed and shorn of common sense and ordinary experience.' *Pigman v. Ameritech Pub., Inc.*, 650 N.E.2d 67 at 69 (Ind. App. 1 Dist. 1995) quoting *Belcher v. Buesking*, (1978), Ind. App. 322, 326-27, 371 N.E.2d 417, 420. However, the respondent is entitled to dispute a determination of her motive based on such a frame of reference before it curtails her defense to allegations of contempt. *See, D. Patrick, Inc. at 459.* The Court allows "adequate opportunity" for objection to any duly propounded subpoena duces tecum. *See, State Ex. Rel. Pollard v. Criminal Ct. of Marion Cty.* 329 N.E.2d 573 at 585 (1975). Implicit is the right to a

preliminary consideration of whether such an opportunity has been afforded. Thereafter, a ". . . contempt proceeding is concerned solely with whether or not the respondent's conduct violates a prior court order . . ." *D. Patrick, Inc. at 459.* The respondent had no reason to anticipate that her preliminary and final hearing herein would be merged.

Due process `requires an orderly proceeding, adapted to the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights.' *Kwiatkowski v. Putzhaven,* 126 N.E. 3 at 4 (1920). The respondent's case, as fathomed by the Court, is a product of supposition, seemingly misguided and premised, at best, on judicial notice. The respondent alleged an event reasonably qualifying as motive for retaliation; established a temporal connection between that event and the challenged conduct; characterized that conduct as unprecedented; provided details to prove it unwarranted; and identified the federal rights offended. *(Respondent's Exhibit A, Complaint p 81-13).* Yet the Court credits her contentions, briefed through two original federal actions and subsequent appeals, to "(h)er unexplained and unsupported refusal to cooperate with the Commission . . . " (Per Curiam p 6). (emphasis added). The respondent is entitled to be heard as to the tenor of matters noticed, prompting such a conclusion. *IRE 201(e).*

Civil contempt is an equity procedure, subject to equitable defenses. *See, Matter of Grand Jury Proc. Empanelled May 1988*, 894 F.2d 881 at 884 (7th Cir. 1989). Even if the respondent is in contempt, she is entitled, before being punished, to present facts material to the scope and severity of the sanction. *See, Id. at 885.* A showing of good faith but unreasonable resistance might persuade the Court that her suspension from the practice of law is unnecessary to exact compliance. *See, Id. at 885.*

b. The Court's Order herein is premised on a conclusive presumption of the respondent's guilt.

The Court provides:

> Lawyers, by virtue of their privilege of holding licenses to practice law, are duty-bound to respond to the Commission's requests for information. *See, Ind. Professional Conduct Rule 8.1(b)* (lawyers in connection with disciplinary matters shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority). This heightened obligation to comply with demands for information exceeds the obligation imposed upon nonlawyer citizens.

(Per Curiam p 4-5). (emphasis added).

"The power of the states to control the practice of law cannot be exercised so as to abrogate federally protected rights." *Johnson v. Avery*, 393 US 483, 21 L Ed 2d 718 at 725 ftnt 10-11, 89 S.Ct. 747 (1969). (citation omitted). Nonetheless, the respondent is condemned, hastened by the

Court's dichotomy between lawyers and nonlawyers:

> Here there is a unique nexus between the refusal to respond to the subpoena and the fact that the refusal is that of a lawyer under investigation for professional misconduct. In effect, the respondent has managed to demonstrate professional misconduct before our very eyes.
>
> (Per Curiam p 6).

Apparently, the aforementioned procedural history reflects a prohibited course of action or sinister motive in the Court's estimation. In any event, its ruling camouflages a violation of constitutional right.

The Court's predisposition towards lawyers resisting a subpoena duces tecum from the Commission is evidenced by its rules and confirmed by the Order at hand. Rule 23, Section 9(f) of the Indiana Rules For Admission To The Bar And The Discipline Of Attorneys provides that the failure to comply with such subpoenas "shall be punished as a contempt of (the Indiana Supreme Court)." *Ind. Admin. Disc. R. 23 §9(f).* (emphasis added). The United States Supreme Court would likely respond:

> While the (regulation) no doubt represent(s) a good-faith attempt to achieve a laudable goal, (it) cannot pass muster under the Due Process Clause of the Fourteenth Amendment, because (it) employ(s) (an) irrebuttable presumption . . .
>
> *Cleveland Board of Education v. LaFleur,* 414 US 632 at

648 (1974).

The provision ". . . insists on presuming rather than proving (that a lawyer's non-compliance is unjustified perhaps) because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify (mandatory sanctions)." *Stanley v. Illinois*, 405 US 645 at 658 (1972). Such a mandate, ". . . incapable of being overcome by proof of the most positive character", *Heiner v. Donnan*, 285 US 312 at 324 (1932), ". . . is so arbitrary and unreasonable that it cannot stand under the 14th Amendment." *Id. at 325.*

The Court attributes its Order herein to a lack of proof, suggesting the respondent was exempted from Rule 23, Section 9(f) of the Indiana Rules For Admission To The Bar And The Discipline Of Attorneys. (Per Curiam p 5-6). Instead, she supposedly sabotaged her defense in an effort to control the proceedings. (Per Curiam p 5). So regarded by the Court, it is impossible to imagine her sustaining a case before it. As a practical matter if nothing else, she was subject to a conclusive presumption of guilt.

c. The Court's Order herein impedes open and equal access to courts.

The respondent's contentions will certainly fail or prevail. They

may properly subject her to penalty.[5] However, prosecuting them should never in itself constitute contempt. The Court's insistence to the contrary is reminiscent of the ". . . unreasoned distinctions that can only impede open and equal access to the courts." *See, North Carolina v. Pearce*, 395 US 711, 23 L Ed 2d 656 at 669, 89 S. Ct. 2072 (1969).

d. The Court's Order herein chills the exercise of basic constitutional rights.

The respondent reportedly demonstrated ". . . a serious violation of her professional responsibility, regardless of the merits of any response she may have." (Per Curiam p 6). The Court concludes:

IT IS THEREFORE, ORDERED that the respondent,

---

[5] The respondent has invariably advanced cogent arguments, founded on law and facts. She has cited error in the denial of federal intervention in the investigation underlying this proceeding. The recent ruling of the Seventh Circuit, affirming abstention, reflects a departure from precedent with equal protection implications; effectively precludes notice pleading in cases subject to federal abstention; creates a standard for motions to dismiss that can prematurely preempt discovery and does so as to the respondent; and equates due process with a fair appeal, regardless of bias in the first instance, contrary to precedent of the United States Supreme Court. *(Zena D. Crenshaw v. The Supreme Court of Indiana, et. al., No. 98-2882 before the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, Petition For Rehearing with Suggestion for Rehearing En Banc.)*

> Zena D. Crenshaw, is suspended from the practice of law in this state, effective thirty (30) days from the date of this order. The respondent is ordered to file the affidavit required by Admis. Disc. R. 23(26)(c)(1). To be reinstated to the practice of law, she must purge herself of her contempt of this Court by fully complying with the Disciplinary Commission's amended subpoenas, issued July 22, 1998, and August 27, 1998. The Disciplinary Commission is directed to notify this Court in writing of the respondent's compliance with the directives of those subpoenas.
>
> (Per Curiam p 7).

If the respondent complies with the subpoenas at issue and effectively abandons her related appeal questioning the appropriateness of federal intervention in the underlying investigation, the Court may allow her return to the practice of law. Of course, as a result, the claims prompting her resort to federal court would never be addressed on their merits. This Court foreclosed the prospect of considering them. Should the respondent persist in pursuing federal intervention, she will remain suspended as a lawyer. Should those efforts prove futile, she may never resume her profession. Surely, such a predicament cannot be condoned:

> A court is 'without right to . . . put a price on an appeal. A (party's) exercise of a right of appeal must be free and unfettered. . . . [I]t is unfair to use the great power given to the court to determine sentence to place a (party) in the dilemma of making an unfree choice.'
>
> *Pearce at 669.*

This Court chills the exercise of basic constitutional rights by exacting a harsh penalty for what the respondent is entitled to do. *See, Pearce at 668.*

III. A mere stay subject to further hearing herein prescribes the sanction in anticipation of future contempt or a finding thereof, contrary to precedent of this Court. All sanctions imposed against the respondent should be rescinded.

A mere stay subject to further hearing herein prescribes the sanction in anticipation of future contempt or a finding thereof, contrary to precedent of this Court. *See, Bottoms at 89* citing *Thomas v. Woolen,* (1971) 255 Ind. 612, 266 N.E.2d 20. "A court cannot 'anticipate the breach, assess the penalty and provide for the execution.'" *Id. at 89.* The respondent should receive the additional hearing(s) to which she is entitled without a predetermined penalty for noncompliance. *See, Id. at 89.*

IV. Irreparable harm will result from a denial of stay in the alternative; The Disciplinary Commission of this Court will not be unduly prejudiced should the respondent's suspension be stayed for the time required for review by the High Court;

The respondent requests that, at a minimum, the Court stay the effectiveness of her suspension until she can present this matter to the Supreme Court of the United States by petition for certiorari. It presents substantial federal questions and there is a reasonable probability that four

Justices will consider them sufficiently meritorious to grant certiorari. There is a fair prospect that a majority of the High Court will conclude that the decision at issue was rendered contrary to constitutional provisions.

Irreparable harm will result from a denial of the requested stay. The respondent must notify clients of her suspension and assist them with securing new counsel on or before April 29, 1999. (Per Curiam p 7). Such undue disruption will prove irreversible, particularly upon the passage of time required for appeal. The clients will undoubtedly form new alliances with professionals that the respondent cannot and, perhaps, should not displace upon reinstatement in the interest of continuity.

The Commission will not be unduly prejudiced should its investigation of the respondent be stayed for the time required for review by the Supreme Court of the United States. The complainant, Richard M. Cagen, has withdrawn as administrator for the estate of Nina M. Crenshaw, deceased. The respondent's siblings are not and have never been a party to this proceeding. Further delay will not hinder a finding as to her conduct in 1996. The subpoenas at issue were not propounded until July 22 and August 27, 1998. (Per Curiam p 7).

V. CONCLUSION

For the foregoing reasons, the respondent prays that her motion is granted and that she be notified of any ruling entered thereon by April 26, 1999.

RESPECTFULLY SUBMITTED,

/s/Zena D. Crenshaw, #10521-45
CRENSHAW PROFESSIONAL OFFICES
4581 Broadway Gary, IN 46409
(219)980-2055 [fax](219) 887-8109

APPENDIX C

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF	]	
THE CONTEMPT OF THE	]	
SUPREME COURT OF	]	
INDIANA OF	]	45S00 9809 DI 506
ZENA D. CRENSHAW,	]	
	]	
Respondent.	]	

ORDER DENYING MOTION
TO RESCIND OR STAY SANCTION

By Order issued April 9, 1999, this Court found the respondent, Zena D. Crenshaw, in contempt of this Court due to her failure to abide by investigatory subpoenas issued by the Indiana Supreme Court Disciplinary Commission. Because we found her in contempt, we ordered her suspension from the practice of law in this sate, beginning thirty days from the date of that order, unless and until she purged herself of the contempt by complying with the subpoenas. The respondent has now filed her *Motion to Rescind Sanction Subject to Further Hearing Herein or Stay its Effectiveness to Allow Petition for Certiorari*, asking therein, *inter alia*, for a postponement of the effective date of her suspension or, in the alternative, a recission of that sanction to allow her further argument before this Court, apparently on the issues of her contempt and appropriate

sanction therefore.

And this Court, being duly advised, now finds that her motion should be denied.

IT IS THEREFORE, ORDERED that the respondent's *Motion to Rescind Sanction Subject to Further Hearing Herein or Stay its Effectiveness to Allow Petition for Certiorari* is denied.

The Clerk of this Court is directed to forward notice of this Order to the respondent and to the Indiana Supreme Court Disciplinary Commission.

DONE at Indianapolis, Indiana, this 5th day of May, 1999.

/s/Randall T. Shepard
Chief Justice of Indiana

All Justices concur.